

Fleming, et al. v. COP, et al.

No. CV04-2338 RSM

**DECLARATION OF MARCUS B. NASH
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,

Plaintiffs,

vs.

THE CORPORATION OF THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST OF LATTER-DAY
SAINTS, a Utah corporation sole, a/k/a
"MORMON CHURCH"; LDS SOCIAL SERVICES
a/k/a LDS FAMILY SERVICES, a Utah
corporation,

Defendant.

NO. 04-2338 RSM

DEPOSITION UPON ORAL EXAMINATION OF

JON R. CONTE, PH.D.

VOLUME I

9:39 o'clock a.m.

October 21, 2005

601 Union Street

Suite 3100

Seattle, Washington

REPORTED BY:

ALISON LOTT, CCR#2337

EXHIBIT D

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1 would be qualified to use those tests or measures.

2 Q Is there any controversy as to whether the Trauma Symptom

3 Inventory is a psychological test?

4 A There is some debate about what it actually measures. I'm

5 not aware of anyone suggesting that it's not a

6 psychological test.

7 Q How do you define a psychological test?

8 A Well, it's a set of questions using some format to obtain

9 responses from an individual, which has some type of

10 scoring, and typically some kind of summary conclusions,

11 and that there is some -- there's been some effort to test

12 the psychometric properties such as reliability and

13 validity.

14 Q Now, with regard to the Trauma Symptom Inventory, has that

15 been assessed as to its reliability and validity?

16 A Yes.

17 Q And can you point me to the academic literature that

18 assessed and determined the reliability and validity of the

19 Trauma Symptom Inventory?

20 A Yeah. The best summary would be that which appears in the

21 manual that is provided -- or, can be purchased along with

22 the test, and that summarizes the psychometric testing that

23 was undertaken to develop and validate the measure. Now,

24 as I recall, there are some early articles in peer reviewed

25 publications by the author, John Briere, B-R-I-E-R-E, which

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1 also address some of the psychometric properties. But I

2 haven't seen those in a very long time, so I can't tell you

3 where they are.

4 Q Now, the three tests that you used in connection with these

5 two evaluations, the Trauma Symptom Inventory, the Symptom

6 Assessment 45 questionnaire, and the Detailed Assessment of

7 Post-Traumatic Stress, were these tests just basically

8 asking either Mr. Kelly or Mr. Denny to assess their own

9 symptomatology?

10 A Yeah. Assessment might be a confusing term, so I would say

11 it asked them to describe their symptoms or to rate the

12 presence of them using one scale or another. They are self

13 report measures.

14 Q Do you have any concerns about using those tests in a

15 forensic setting?

16 A I don't have any more concerns about those tests than I do

17 about the self report of a client that's provided in the

18 interview. The advantage of at least the Trauma Symptom

19 Inventory and the DAPS, D-A-P-S, is that they do provide

20 some effort to check the reliability of report. They do it

21 in different ways, but they do have some validity scales

22 contained within them. The SA-45 does not. It's all self

23 report, so the same concern you would have about self

24 report that comes verbally in an interview, you should also

25 have, with the one caveat of the validity of the validity

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1 scales, you should also have with the measures.

2 Q For Todd Denny, let's talk about him first. I have Exhibit

3 4, which is your forensic report --

4 A Correct.

5 Q Exhibit 5, which appear to be interview notes?

6 A Correct.

7 Q And do you take these interview notes as you're doing the

8 interview of the client?

9 A Yes.

10 Q And do you take them directly onto a computer?

11 A Yes.

12 Q While you're interviewing the client, you're typing down

13 responses and such?

14 A Correct.

15 Q And then Exhibit 6, which appears to be similar interview

16 notes of Michelle Denny who's Todd Denny's ex-wife?

17 A Correct.

18 Q And Exhibit 7 is the Trauma Symptom Inventory?

19 A Correct.

20 Q Okay. You also said that you read the deposition summary

21 and skimmed his deposition transcript?

22 A Correct.

23 Q That you reviewed the amended complaint?

24 A Yes.

25 Q You reviewed the interrogatory answers that he provided.

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1 How closely did you look at those?

2 A Not very.

3 Q Did you review any school records?

4 A No.

5 Q Did you review any employment records?

6 A No.

7 Q Did you review any medical records?

8 A No.

9 Q Did you review any divorce records?

10 A No.

11 Q And he indicated that he went through marriage counseling

12 with his wife prior to the divorce. Did you review any

13 counseling records?

14 A No.

15 Q Have you asked or sought to review any of those materials?

16 A No, no. Well, to be totally responsive, I did not ask. I

17 received as part of the dissemination of the records to me

18 an empty file from the medical records company, and so I

19 assumed that those would be forthcoming, but I have not

20 pursued to see why they were not in there. And I didn't

21 know what specifically was to be included.

22 Q And you said that -- I reviewed Mr. Denny's report and it

23 doesn't appear that there's any diagnosis of any

24 psychological disorder in the report.

25 A That's correct.

7 (Pages 22 to 25)

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1 Q Even though it does not appear in the report, do you
2 believe that Mr. Denny meets criteria for any psychological
3 disorder?
4 A No. He has some elements of a social phobia, or of a
5 phobia, but I don't think that it reaches a diagnosable
6 level, and I wouldn't typically diagnose him with that for
7 the purposes of a forensic evaluation.
8 Q Okay. You said he has some elements of a social phobia.
9 What are you referring to?
10 A He reports anxiety of two symptoms indicative of social
11 phobia. One is eating in front of and speaking in front of
12 other people. Although he reports that he can do both, he
13 feels anxious about it.
14 Q When you said that -- let's take those in reverse order.
15 You said speaking in front of people. Isn't what he
16 actually said that he hates giving public speeches?
17 A Yes.
18 Q You're familiar with the term base rate, aren't you?
19 A Yes.
20 Q Do you know what the base rate is for people who hate to
21 give public speeches?
22 A That's a good question. No, I imagine it's fairly common.
23 Q Do you know how many people who have roles -- highly
24 recognizable public roles, hate giving public speeches?
25 A No, but I would suspect it's a fair number.

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1 Q Did Mr. Denny tell you what he hates about it?
2 A Just that he feels anxious.
3 Q Did he tell you in what context he's expected to give
4 public speeches?
5 A As part of his work. And you know, by public, we're not
6 talking about the general public, we're talking about
7 colleagues or associates or people in business.
8 Q Okay. And you said as part of his work. Did he explain to
9 you the context as part of his work that he's expected to
10 give public speeches?
11 A He did, but I don't recall what it was.
12 Q What does he have to give public speeches on?
13 A Work topics.
14 Q Did he tell you what happens to him psychologically or
15 emotionally when he gives public speeches?
16 A Only that he feels uncomfortable and nervous.
17 Q Did he tell you whether he's ever turned down or rejected a
18 public speech because of the fact that he does not like to
19 give them?
20 A He did not, and I don't believe that he has.
21 Q Did -- has he ever sought training on giving public
22 speeches?
23 A No.
24 Q Has he ever sought any help on reducing the anxiety that he
25 may experience in giving public speeches?

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1 A No. Did you say help?
2 Q Yes.
3 A No.
4 Q Are you aware of any authority that says victims of
5 childhood sexual abuse are more inclined to hate giving
6 public speeches than members of the general population?
7 A No. My clinical impression is that many victims of sexual
8 abuse do have a fear of being exposed, but I can't think of
9 an authoritative citation for that, other than my clinical
10 experience. I'm not suggesting that that's the case in
11 this situation.
12 A Okay. You also said that he has a concern about eating in
13 front of others.
14 A Correct.
15 Q Since when has he had a concern about eating in front of
16 others?
17 A As an adult.
18 Q And did he tell you how that has impacted him, or how that
19 manifests in his daily life?
20 A I don't believe it does.
21 Q Does he avoid eating with family members?
22 A No.
23 Q Does he avoid eating in restaurants?
24 A No.
25 Q Has anyone criticized his table manners?

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1 A No.
2 Q Now, you spoke to his ex-wife.
3 A Yes.
4 Q Did you speak to her about this concern he has about eating
5 in front of people?
6 A I did not.
7 Q Based on your interview of Todd Denny, did he grow up in an
8 intact family?
9 A Yes.
10 Q To your knowledge, were there any separations or divorce or
11 infidelity in his family of origin?
12 A No.
13 Q To your knowledge, did his parents have appropriate
14 parenting skills?
15 A Yes.
16 Q Was there any DV in his home while growing up? And by
17 "DV," I mean domestic violence.
18 A Not that I'm aware of.
19 Q Any emotional abuse in his home while growing up?
20 A No.
21 Q Does he have any close relatives with problems with mental
22 illness?
23 A Not that I recall.
24 Q Was he ever bullied as a child?
25 A No.

8 (Pages 26 to 29)

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1 Q There's an indication of -- he told you about his younger
2 brother?
3 A Yes.
4 Q And did he tell you that his younger brother did poorly in
5 school and got in trouble through high school and did some
6 time in jail for drug related charges?
7 A Yes.
8 Q Did he indicate whether his younger brother was ever a
9 victim of childhood sexual abuse?
10 A I don't recall. I'd have to look.
11 (Brief pause as the witness peruses
12 his file.)
13 Q If you're looking for it in your report where you address
14 this, it's Page 10, second paragraph.
15 A I was actually trying to find it in the notes, but -- this
16 paragraph certainly doesn't indicate that the brother was
17 abused.
18 Q Do you suspect the younger brother was sexually abused?
19 A Let me just check my notes. I don't remember. I can't
20 find that he told me that. I have no reason to suspect it
21 if he didn't tell me that.
22 Q Have you testified in the past that doing poorly in school,
23 being a behavioral problem in school, having criminal
24 problems, and having drug problems, are all causally
25 related to childhood sexual abuse?

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1 A Well, they can be. They were not necessarily.
2 Q They can be related to other things as well, too?
3 A Correct.
4 Q Todd Denny also told you about an incident with a Big
5 Wheel, about him pushing his little brother on a Big Wheel
6 and into a fireplace.
7 A Correct.
8 Q And he said to you that it may have been on purpose; he's
9 not sure?
10 A Correct.
11 Q Is it your understanding that that incident occurred prior
12 to the incident of abuse with Jack Loholt?
13 A Yes.
14 Q Did you ask Todd Denny to what did he attribute that
15 potentially aggressive act?
16 A He didn't know. He wasn't sure. Didn't know whether it
17 was sibling rivalry or he was angry for some other reason.
18 Q Do you have any theories as to why he may have pushed his
19 brother into a fireplace?
20 A No.
21 Q It's your understanding that it was a fireplace with a fire
22 in it, correct?
23 A Right.
24 Q Have you testified in other cases that acting out
25 aggressively is a symptom or caused by sexual abuse?

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1 A Well, in boys, it can be. It's not necessarily only caused
2 by sexual abuse, but aggression in boys can be associated
3 with sexual abuse.
4 Q What other things might cause acting out in the type that
5 Todd Denny described to you during your interview?
6 A Sibling rivalry. There can be a more aggressive
7 personality who is generally aggressive for temperamental or
8 other reasons.
9 Q What about being the victim of physical abuse? Is that
10 causally linked to an aggressive violent behavior?
11 A Can be.
12 Q Is there documentation or research to support that causal
13 connection?
14 A Well, yes. I mean, I would say the literature on physical
15 abuse in general suggests that in boys, increased
16 aggressiveness is a -- can be a response to aggression,
17 either witnessing it or being victimized by it, or being in
18 a home that is generally violent.
19 Q Todd Denny self reported to you that he always did well
20 academically, correct?
21 A Yes.
22 Q He told you that he was in the top five percent of his
23 class?
24 A I believe so, yes.
25 Q Do you have any reason to doubt that he did exceptionally

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1 well in school?
2 A No.
3 Q Any reason to doubt that he did exceptionally well in
4 school even after the incident of abuse?
5 A No.
6 Q Do you have any reason to believe that the incident of
7 abuse affected his school performance in any way?
8 A No.
9 Q Todd Denny reported to you that he was always socially
10 popular?
11 A Yes.
12 Q That he had many friends then, and has many friends now?
13 A Yes.
14 Q Do you have any reason to believe that that is not true?
15 A I have no reason to believe it's not true of his childhood,
16 and it's not that I disbelieve his statement, but he also
17 says that he tends to be more introverted. So you would
18 have to probably explore what he meant by close friends.
19 He certainly has friends, he likes to do activities with
20 friends, and then he also reports that he tends to be
21 somewhat introverted, and he also likes to spend time
22 alone.
23 Q Now, being introverted, that's sort of a personality
24 characteristic, isn't it?
25 A Yes.

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1 Q That's not a sign or a symptom of a psychological disorder,
2 is it?

3 A Well, it can be. I'm not suggesting that it is in this
4 case. Can we stop for just one second?

5 (A discussion was held off the
6 record.)

7 (A brief recess was taken.)

8 Q Dr. Conte, if at any time you'd like to take a break or you
9 need to stop because you're not feeling well, just let me
10 know.

11 A Thank you. I appreciate it. I'm fine.

12 Q Before we went off the record, we were talking about Todd
13 Denny saying that he was an introvert. Did you do any
14 psychological testing that confirmed he is an introvert?

15 A No.

16 Q And how would you define an introvert for us?

17 A Well, I think the way -- I think there are two components
18 to the way he described it. He says he's not very
19 emotional, or at least his wife tells him he's not very
20 emotional, and there are periods of time when he likes to
21 be alone, although after a period of time he also admits
22 that he tends to get lonely. And apparently, part of the
23 time he works at home. So I would say that this is a
24 person who tends to be somewhat inward and at times anxious
25 around other people, but not extremely so.

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1 Q Was there any indication from the life history that he gave
2 you during your interview that would indicate that he
3 actually is not an introvert?

4 A Well, he has friends, he's done very well, he's traveled,
5 he's met customers, he's athletic and engages in sports
6 activity with others, so I think he has some feelings of
7 being introverted, but not to a debilitating point of view.
8 And as far as I can tell he's been quite successful in
9 business.

10 Q Did he tell you that when he graduated high school, he was
11 very outgoing?

12 A Yes.

13 Q Is that consistent with him being an introvert?

14 A Yes. I mean, I think people can exhibit different
15 personality preferences at different points in time that
16 are quite different.

17 Q And is that normal for a person to do so?

18 A Yes.

19 Q You said he told you he did not like large crowds?

20 A Yes.

21 Q Do you know what the base rate for that is, somebody not
22 liking large crowds?

23 A No, but I'm sure it's not rare.

24 Q Is there anything -- can you point me to anything that says
25 victims of childhood sexual abuse dislike large crowds any

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1 more than members of the general population?

2 A No.

3 Q You mentioned had that he was always an athlete. Did he
4 indicate what sports he played or plays?

5 A You know, I don't recall, but I think he plays more than
6 one. I know he's really into golf now as an adult, but I
7 don't recall the high school sports. I think there were
8 multiple.

9 Q Did it seem to you, based on the way he described himself,
10 that in high school and college he was sort of the big man
11 on campus?

12 A Yes. Jock.

13 Q And did he give you any self report regarding his job
14 performance since graduating from college?

15 A He's been successful, and he's risen steadily.

16 Q Now, you mentioned that he is divorced?

17 A Yes.

18 Q And how is his relationship with his ex-spouse, based on
19 his and her report to you?

20 A Positive. Well, generally positive. Certainly, there's no
21 conflict. She had some negative things to say, for
22 example, that he was out of town and didn't even
23 acknowledge her birthday even though they'd been together
24 for, I think it's 16 years. But there's no conflict and
25 they manage the children well and they continue to

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1 socialize with each others' families.

2 Q And how many children does he have?

3 A Two or three.

4 Q And how did he describe his relationship with his children?

5 A Good. He's very involved, trying to be more involved than
6 his own father was. He has three children.

7 Q What percentage of American marriages end in divorce?

8 A Over half. I don't know exactly.

9 Q You asked him why he was divorced, and do you recall how he
10 responded to that question?

11 A I don't.

12 Q It's on Page 11 of your report. Fourth paragraph, fifth
13 and sixth lines.

14 A Yeah. He told me that -- I do recall now. He told me that
15 he tended to kind of be preoccupied with his own
16 activities, sports, or going out with friends, and that his
17 perception is that that was an issue in the marriage. And
18 he identified that as a similar behavioral tendency to his
19 own father.

20 Q Is there any research that backs that up, that people tend
21 to behave with their spouses the way they saw that their
22 parents behaved?

23 A Well, boy, I don't know if there's any research
24 specifically on that point, but I would say that it's a
25 fundamental belief in mental health that people either tend

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1 to recreate that which they experienced or to try to
 2 exhibit the polar opposite. So it's not at all surprising
 3 that someone would say that he does a similar behavior to
 4 that of his own father.
 5 Q And then, once realizing how that's not a positive way
 6 to -- or, reinforcing the relationship, then attempt to do
 7 the polar opposite?
 8 A Well, I suppose that's possible. I guess what I was
 9 referring to is, typically we either repeat what we
 10 experienced, maybe without knowing that we're repeating it,
 11 or we reject and behave the opposite, not necessarily even
 12 realizing we're doing that. There can be awareness, and it
 13 can be fairly conscious, or it can be relatively
 14 unconscious or out of awareness.
 15 Q And based on your interviews with Todd Denny and his
 16 ex-wife, did it appear that he was mimicking the behavior
 17 of his father during his marriage, and has since tried to
 18 become much more involved in, for example, his children's
 19 lives rather than just his own?
 20 A I have to break it down a little bit. I don't believe his
 21 wife commented on that. That is certainly his
 22 understanding, and this may not have been your intention,
 23 but it sort of sounded like he had this awareness, and then
 24 he -- about the marriage and his kids. I think for him
 25 those are two separate issues. Earlier in his life, he

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1 realized he wanted to be different than his own father, and
 2 so while still married, he tried to be more involved with
 3 his kids, and as a separate issue, he also tended without,
 4 I think, awareness early on, to be like his father in the
 5 sense that he liked to engage in his own activities, and it
 6 was not an issue that was up for discussion. So if his
 7 wife complained that he was going out with his buddies, he
 8 would say we're not going to go there. We're not going to
 9 discuss it. So I think that his response to his own
 10 children, and his response to his wife, are separate, but
 11 do seem to have some relationship with his own childhood
 12 with his father.
 13 Q Now, you said that his wife complained that, for example,
 14 after they were married 16 years, he didn't call her on her
 15 birthday.
 16 A Correct.
 17 Q How common is that, that wives complain that after 16 years
 18 of marriage or 16 years of being together their husband
 19 forgets their birthday or their anniversary or something
 20 like that?
 21 A Thank God I've never done it, but I think it's probably
 22 fairly common. I don't think that -- she was using that as
 23 an example of what she perceived as a general pattern in
 24 the relationship of his being emotionally unavailable, and
 25 somewhat disconnected. But that fact alone, I suspect is

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1 relatively common.
 2 Q And how about the complaint from wives after an extended
 3 period of togetherness that they feel that their husband is
 4 not as emotionally available or connected?
 5 A I'm sure that's a major complaint.
 6 Q Did you used to watch everybody loves Raymond when it was
 7 on?
 8 A You know, I didn't actually.
 9 Q I was just wondering if you were interviewing Todd Denny
 10 and thinking Raymond, particularly when he's using all his
 11 free time to play golf.
 12 A No, but I understand the reference.
 13 Q I want to talk about the sexual abuse incident with Jack
 14 Loholt. And you asked Mr. Denny about that, didn't you?
 15 A Yes.
 16 Q To your knowledge, did Mr. Denny know Jack Loholt before
 17 the camping trip?
 18 A I don't believe he did.
 19 Q To your knowledge did he look up to him or admire him or
 20 trust him as like a father figure or anything like that
 21 prior to the camping trip?
 22 A No.
 23 Q How did he get invited on the camping trip?
 24 A I believe he knew another boy that was going.
 25 Q And he told you that he slept next to Loholt in the cabin?

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1 A Yes.
 2 Q Did he tell you how he ended up sleeping next to Loholt in
 3 the cabin?
 4 A I don't recall. I don't believe so.
 5 Q What did he tell you about the cabin?
 6 A That he didn't remember it, which he always thought was
 7 strange, because he was very interested in architecture.
 8 Q Did he give you any reason to believe that the architecture
 9 of the cabin was significant in some way?
 10 A No, I think what was significant to him was that he
 11 couldn't remember it.
 12 Q Did he tell you how many other campers were on the camping
 13 trip as well?
 14 A There were a number of other boys, but I don't believe he
 15 recalled.
 16 Q Did he tell you where the other campers were sleeping on
 17 the night of the sexual abuse incident?
 18 A My belief, they were all sleeping in the same area, but I'm
 19 not sure about that.
 20 Q Did he tell you -- I mean, were they sleeping in beds, were
 21 they sleeping in sleeping bags?
 22 A Bags.
 23 Q I'm sorry?
 24 A Bags.
 25 Q And how long was the camping trip that they were on?

11 (Pages 38 to 41)

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1 A I believe it was a weekend, but I may be in error.
 2 Q And did he have any indication prior to the sexual abuse
 3 incident itself that Jack Loholt was interested in him?
 4 A No. He didn't report any.
 5 Q What did he tell you about the incident itself?
 6 A That he woke up to having Mr. Loholt's hand on his
 7 genitals. He doesn't remember any emotions, but that as he
 8 recalls, he became erect. He doesn't think it went on for
 9 very long, and it ended with Mr. Loholt sucking his toes, I
 10 believe.
 11 Q What time of the night did this happen?
 12 A He doesn't know.
 13 Q Anyone else see it, to his knowledge?
 14 A No.
 15 Q Any communication between him and Jack Loholt before,
 16 during, or immediately after the incident?
 17 A I don't believe so.
 18 Q Did he tell you how long the incident lasted?
 19 A Not very long.
 20 Q Did he move away from Jack Loholt --
 21 A He didn't say that he did.
 22 Q -- after the incident?
 23 A Oh. He didn't see him again after the incident, after the
 24 camping trip.
 25 Q Okay. And I was asking not like did he relocate

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1 residences, but did he move from where he was in the
 2 sleeping bag?
 3 A Not that I recall. No, no, not that I recall.
 4 Q Did he communicate to you that he was frightened during the
 5 incident?
 6 A He did not -- I don't recall that he said he was
 7 frightened. I think he said it was weird.
 8 Q Did he indicate to you that he was anxious or nervous
 9 during the incident?
 10 A No.
 11 Q Did the incident even cause him to remain awake at night?
 12 A No. He went back to sleep.
 13 Q Does the fact that he went back to sleep seem inconsistent
 14 with being afraid or anxious about what had just happened?
 15 A Well, no. Can I explain?
 16 Q Sure.
 17 A I mean, some kids who are really terrified will go back to
 18 sleep; some will not. The fact that he went back to sleep
 19 I think is consistent with his description of it feeling
 20 weird, and his actually getting some level of arousal. So
 21 I think his description of going back to sleep is
 22 consistent with his description of his -- of the
 23 experience.
 24 Q Had anything like that ever happened to Todd Denny prior to
 25 the camping trip?

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1 A He said no.
 2 Q Anything like that ever happen to Todd Denny after the
 3 camping trip?
 4 A No.
 5 Q So this is the -- as far as you know, the sole and
 6 exclusive incident of sexual abuse that he's ever suffered?
 7 A By his report, yes.
 8 Q And the way he described it with you is Jack Loholt fondled
 9 him, sucked on his toes, he thought it was weird, and he
 10 fell back asleep?
 11 A Yes.
 12 Q And you said he told you that the next day, he told his
 13 friend Danny Fleming?
 14 A I don't know who it was, but he told someone, yes.
 15 Q And he told you that that friend told his parents -- that
 16 his friend told his friend's parents?
 17 A I didn't recall that. I'll have to check. Yes.
 18 Q And that he speculated that his friend's parents never said
 19 anything because they were LDS also, and wanted to protect
 20 the church; is that what he told you?
 21 A Yeah, but I don't know when he came to that opinion. It
 22 may be as an adult. But that's what he told me.
 23 Q Did you read his deposition transcript when he was asked
 24 that same question under oath as to telling his friend --
 25 or, his friend telling his friend's parents?

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1 A I read it but I don't recall what it was.
 2 Q So would it be in conflict with what he told you if he said
 3 in his deposition that he had no idea whether his friend,
 4 Danny Fleming, actually told Danny Fleming's parents?
 5 A Yes.
 6 Q You mentioned before that you were not aware that Jimmy
 7 Allenbach was actually a plaintiff in the lawsuit, correct?
 8 A Correct.
 9 Q And so you haven't read Jimmy Allenbach's deposition, have
 10 you?
 11 A Correct.
 12 Q Or spoken to Jimmy Allenbach?
 13 A Correct.
 14 Q Now, he said that he told Danny Fleming the next morning,
 15 and then he said that he rode back to town in the same car
 16 as Loholt, right?
 17 A Correct.
 18 Q Did he tell you how this came about?
 19 A No.
 20 Q Did you ask, how did it come about that you rode back in
 21 the same car with him?
 22 A No.
 23 Q Did he tell you who else was in the car?
 24 A No.
 25 Q Did he tell you whether he tried to ride back with somebody

12 (Pages 42 to 45)

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1 other than Loholt?

2 A He did not.

3 Q Do you know if he was forced to ride back with Loholt?

4 A I do not.

5 Q And do you have any idea what was talked about in the car

6 ride back with Loholt?

7 A No.

8 Q You said that he never saw him again.

9 A He doesn't think he ever saw him again.

10 Q Did he tell you that he actively avoided him --

11 A No.

12 Q -- or was it just that he just happened to never see him

13 again?

14 A His report is that he didn't happen to see him again. He

15 didn't describe trying to avoid him.

16 Q Did he tell you whether he was afraid of Loholt?

17 A He did not.

18 Q After telling Kenny Fleming the next morning, when was the

19 next time, to your knowledge, that he discussed that

20 incident with anyone?

21 A I believe when, if I remember correctly -- well, I don't --

22 not until he was an adult, and not until shortly before he

23 became involved in the case, and I don't recall the

24 specifics of that, how he became involved.

25 Q Let me see if I can refresh your memory. Was it when an

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1 investigator for plaintiff's attorney visited him at home?

2 A It could be.

3 Q And that was the next time he discussed it with anyone?

4 A That's my understanding.

5 Q And didn't he tell you that he would not even be thinking

6 about it these days except for the lawsuit?

7 A Yes.

8 Q And he told you that he had no idea how the incident

9 affected him?

10 A Correct.

11 Q And he told you that the sexual abuse incident was the most

12 horrific thing that happened to him in his childhood?

13 A Yes.

14 Q And what he's describing is, him thinking that's weird, and

15 falling asleep?

16 A Yes.

17 Q Pretty good childhood, isn't it?

18 A Yes.

19 Q Now, you mentioned that he is not emotional, and does not

20 share a lot?

21 A Yes.

22 Q And when you talked to his ex-wife, did she tell you that

23 that's how his family is?

24 A No. I mean, I think she said that he was somewhat

25 atypical, that his brothers, for example, were more

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1 emotional --

2 (Brief pause as the witness peruses

3 his notes.)

4 A I apologize, these aren't numbered, but it's on the second

5 page of --

6 Q The second paragraph from the end?

7 A Yeah.

8 Q Okay. And I guess what I was referring to is up in

9 Paragraph 3.

10 A On the same page?

11 Q Yes. I guess it's second paragraph, "His parents not so

12 demonstrative as my parents were."

13 A Yes.

14 Q Is there a connection between how emotionally demonstrative

15 one's parents are and how emotionally demonstrative the

16 child becomes?

17 A Yes. Typically.

18 Q Is it unusual for, say, somebody to become a big hugger as

19 an adult if their parents were emotionally reserved and

20 didn't do a lot of hugging as children?

21 A Well, again, I think we're talking about the two ways that

22 people -- they either duplicate or they reject. So it's

23 not atypical for somebody who was raised in an environment

24 where there wasn't much hugging to also not hug, but some

25 people will reject the not hugging and become quite touchy

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1 and huggy. But it certainly is not atypical for someone to

2 more or less closely duplicate their own early experiences.

3 Q Todd Denny told you that he doesn't worry about his

4 children being sexually abused; is that correct?

5 A Correct.

6 Q Was that statement unusual to you --

7 A Yes.

8 Q -- from a person who was sexually abused himself?

9 A Yes. And from the general public, I would say.

10 Q And Todd Denny told you that he thinks that sexual abuse of

11 children is rare?

12 A Correct.

13 Q And you disagree with that statement?

14 A Yes.

15 Q What percentage of children do you believe are sexually

16 abused?

17 A Well, the best data that we have suggests that probably

18 somewhere around 20 percent of male children and maybe 30

19 percent or so of female children have some kind of sexual

20 abuse experience in youth. We don't have really any recent

21 data. So these are studies that were done in the late

22 '70s. But it's a fairly common experience of childhood.

23 Not the majority of children.

24 Q And in that context, how is sexual abuse being defined?

25 A Well, the 20 percent -- the best study we have is Russell,

13 (Pages 46 to 49)

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1 and I can't give you the date, it's been so long. But that
 2 was only of females, and that referred to body on body.
 3 And to be honest with you, I can't remember the exact
 4 figure, but my memory, which will be a good test later, is
 5 about 40 percent of women, I believe. You do get very
 6 different rates if you include non-contact. So if you
 7 include flashing and obscene stares and that kind of thing
 8 you get a much higher rate. But a more conservative
 9 estimate of body on body, actual touching, I believe is
 10 maybe 20 percent of boys and about 30 percent of females.
 11 Q And you said that that's -- the study that you're referring
 12 to is by Russell?
 13 A The female body on body definition is Diana Russell. It's
 14 based on a random sample of the San Francisco Bay area
 15 population. There have been other studies, but not for
 16 some time.
 17 Q And for males, where are you getting that figure?
 18 A To be honest with you, I don't recall. It's sort of an
 19 accepted estimate in the field.
 20 Q Are you of the opinion that whenever somebody sustains
 21 sexual abuse as a child, that they are damaged in a
 22 significant way by it?
 23 A Well, depends on what you mean by damaged, but not
 24 generally. I think if you -- virtually everyone who is
 25 touched does have an impact in one area which has to do

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1 with their having an experience. But damaged in the
 2 psychological sense, and damaged in I think the legal
 3 sense, it's not my belief that everybody who is sexually
 4 abused is damaged. I didn't say that very well. Can I say
 5 it again?
 6 Q Sure.
 7 A I'll try to be more clear. I do not believe that everyone
 8 who is sexually abused is psychologically harmed or damaged
 9 or changed. I believe that many people who are sexually
 10 abused do have a -- have had an experience that does change
 11 them in the sense that they've had the experience, although
 12 for some people, having that experience is not related to
 13 emotional symptoms or difficulty. If you -- I mean, one
 14 way to describe it is, their status changes from being a
 15 non-victim to a victim. But sometimes -- and sometimes,
 16 that's associated with great psychological or emotional or
 17 psychosocial difficulties, and sometimes it's not. Some
 18 people who may be sexually abused don't adopt the notion
 19 that they had the experience -- or, that they had the
 20 experience has any meaning.
 21 Q To your knowledge, has Todd Denny ever had any problems
 22 with suicidal ideation?
 23 A I don't think so.
 24 Q Is a certain degree of suicidal ideation normal?
 25 A Well --

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1 Q I'll ask it a more direct way: Doesn't every one at some
 2 point in their lives contemplate killing themselves?
 3 A I don't know I could agree with that. I would say that
 4 thoughts about killing self, or life would be better if you
 5 are dead, are probably quite common. I don't know that
 6 everybody walking the planet would agree that they've had
 7 that symptom, or that feeling. Sometimes it can be
 8 something that is said, "Well, if it gets bad enough I'll
 9 just kill myself," and it's not really meant as an
 10 intention. I don't think you would consider actual suicide
 11 thought to be quote, unquote, normal. So I would agree
 12 with you that it is a fairly common feeling or attitude.
 13 Q And other than that, has Todd Denny had any significant
 14 suicidality, to your knowledge?
 15 A No.
 16 Q What about problems with depression?
 17 A No.
 18 Q Has he had any --
 19 A Sorry.
 20 Q What about what I'll call sexual identity problems?
 21 A No.
 22 Q Did you discuss with Todd Denny his religious life at all?
 23 A I don't recall that he's religious.
 24 Q To your knowledge, was he raised in a religious family?
 25 A No.

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1 Q Does he have any issues or conflicts or doubts about
 2 religion?
 3 A Not that I'm aware of.
 4 Q What about sexual performance problem?
 5 A Not that I'm aware of. His wife says that he was not as
 6 sexual as she would like, but he did not identify any
 7 distress or issues in that area.
 8 Q And how normal is it for men in particular to have less
 9 sexual desire, less sexual drive as they approach and
 10 exceed the age of 40?
 11 A I think it's probably fairly common.
 12 Q What about problems with drug abuse?
 13 A None that he reports.
 14 Q What about problems with alcohol abuse?
 15 A None that he reports.
 16 Q He told you that he is angry after learning more details
 17 about Loholt's history?
 18 A Yes.
 19 Q Did he tell you where he got those details about Loholt's
 20 history?
 21 A No.
 22 Q To your knowledge, is there any other source for this
 23 information, other than the plaintiffs' attorneys?
 24 MR. HONEYWELL: Object to the form of the
 25 question.

14 (Pages 50 to 53)

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1 A Well, I don't know what contact he's having with the
 2 plaintiffs, but --
 3 Q Do you have a therapy recommendation for Todd Denny?
 4 A No.
 5 Q And do you plan to do any more testing or assessment or
 6 interviews with regard to Todd Denny?
 7 A It would depend -- I assume that there will be an IME. All
 8 things being equal, I would assume that the IME would
 9 include additional psychological testing. Depending on
 10 that testing -- I certainly would want to see that testing,
 11 and depending on who does it and what the testing consists
 12 of, I might recommend additional testing.
 13 Q And with regard to the Trauma Symptom Inventory that you
 14 did for him, was that significant in any way?
 15 A It was significant in being non-significant. The validity
 16 scales raised no question, and all of the dimensions of the
 17 Trauma Symptom Inventory are within normal or non-clinical
 18 limits.
 19 Q Okay. I'm done with Todd Denny. Would you like to take a
 20 break before we go on to Robert Kelly?
 21 A No, I'm fine.
 22 Q Actually, could I take a break?
 23 A Sure.
 24 (A brief recess was taken.)
 25 Q I'd like to go on to questioning you about Robert Kelly.

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1 A Okay.
 2 Q Just some preliminary questions first. When you do the --
 3 or, take a narrative report, or a narrative interview of
 4 someone, you don't know if they're telling you the truth,
 5 do you?
 6 A No.
 7 Q And has that been the subject of scientific study, whether
 8 therapists know when a patient or a client is telling them
 9 the truth?
 10 A Well, I don't know if it's been the subject of scientific
 11 study. I would say it's generally regarded that no mental
 12 health professional has any unique or special capacity to
 13 tell whether or not someone is telling the truth.
 14 Q And when you say there's no unique or special capacity,
 15 would you agree that people in the general population also
 16 don't have special skills in order to tell whether
 17 somebody's telling them the truth?
 18 A Yes. I mean, I guess our society has decided that
 19 examination and cross-examination to search for consistent
 20 and inconsistent details allows the trier of fact to make
 21 decisions about credibility. But a mental health
 22 professional who doesn't have that same -- those same
 23 sources of data has no special capacity. I mean, if
 24 someone is grossly inconsistent, or if someone describes
 25 psychological processes in a way that is inconsistent with

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1 how those processes operate, you may question the report.
 2 But that's not really a determination of whether or not
 3 someone is telling the truth.
 4 Q If you look at Exhibit 9, which is your forensic report on
 5 Robert Kelly --
 6 A Yes.
 7 Q -- the midway down Page 1, it says, "If called to testify
 8 in this matter I will testify as follows." And then if you
 9 go all the way to the first paragraph, or, the very top of
 10 Page 10, so in between those two points, is this something
 11 that you wrote uniquely for Robert Kelly?
 12 A No.
 13 Q Is this something that you paste into your forensic reports
 14 for all the sex cases that you do on behalf of plaintiff?
 15 A No. It would be included if it was a report for mediation,
 16 and the information might be useful to a mediator, or if
 17 there might be a possibility that I would be called upon to
 18 provide general information to the trier of fact. So it is
 19 my understanding of general information. Now, in some
 20 cases there might be other general information that might
 21 be useful. So I would cut and paste, depending. So for
 22 example, if there were a period of time in which a client
 23 had ever had a period of amnesia, then I might include
 24 material in the preamble about memory and memory loss, and
 25 how memory operates. So it's a little bit constructed from

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1 my understanding of the facts in the case, but it is not
 2 specific to an individual, it's general information which
 3 is disclosed in the -- on the possibility that I might be
 4 called to provide general testimony.
 5 Q Okay. And when you said amnesia or memory loss, is that a
 6 factor with regard to either Todd Denny or Robert Kelly, to
 7 your knowledge?
 8 A No.
 9 MR. HONEYWELL: Could I have my copies of the
 10 next group of exhibits?
 11 MR. BOLASINA: Oh, I'm sorry.
 12 (Defendants' counsel presents
 13 documents to Plaintiffs' counsel.)
 14 Q (By Mr. Bolasina) On Page 10 of Exhibit 9, the second line
 15 after "Reason for referral," there's a sentence that says,
 16 "He has never had counseling." Is that what Mr. Kelly told
 17 you?
 18 A Yes.
 19 Q Have you since learned that that statement was not true?
 20 A I've learned that he had anger management.
 21 Q Counseling? Was it anger management counseling that he
 22 had?
 23 A Probably. Sometimes it's called anger management class.
 24 So whether it's inconsistent or -- I mean, I see what
 25 you're saying, and it is in the broadest sense

15 (Pages 54 to 57)

25 (Pages 94 to 96)